IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.835 OF 2003.

Gabriel Nwabuze Akonobo : Appellant.

versus.

The State of Maharashtra : Respondent.

Mrs.Ruchita Dhuru, Appointed Advocate, for the appellant.

Mr.D.R.More, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 13th August 2004.

P.C.

1. This is an appeal filed by the accused through jail. Mrs.Dhuru appointed an advocate to represent the accused. Accused is convicted under the NDPS Act and he is sentenced to suffer R.I. for 13 years and to pay fine of Rs.Two lacs and in default of payment further R.I. for one year under section 29; then he is sentenced to

suffer R.I. for 13 years and to pay fine of Rs.Two lacs and in default of payment further R.I. for one year under section 21; and also he is sentenced to suffer R.I. for 13 years and to pay fine of Rs.Two lacs and in default of payment further R.I. for one year under section 28 r/w Sec.23 of the NDPS Act.

2. The accused, in the circumstances of the case, was produced from Kolhapur Central Prison on 19th July 2004. He stated that he does not want to contest the appeal on merits and he further stated that his advocate may be heard on the point of sentence.

3. Mrs.Dhuru, appointed advocate for the accused, contended that the total substantive sentence awarded upon the accused is of 39 years and even if the sentence is ordered to run concurrently, he should have been inside for 13 years. The total fine imposed upon the accused is Rs.Six lacs or total in default sentence is of three years. Mrs.Dhuru stated that the accused/applellant admittedly is not in position to pay the fine and if he has not paid the fine, he will have to be in jail for a total period of

16 years i.e. 13 years as substantive sentence and 3 years as in default sentence. She stated that if quantity of brown powder is 30.830 kgs., even as per C.A. report, there is no quantitative test analysis made and therefore, in the absence of any quantitative test analysis to all the samples, it could not be said that all the 30 kgs. brown powder was purely heroin and nothing-else. The C.A. report is at Exhibit 30. I have verified the original report and only qualitative test analysis is undertaken as per which each of the 11 samples is in the form of brown powder and each answers test for heroin (Diacetyl Morphine) and hence covered by Section 2 (xvi)(e) of the NDPS Act. She therefore contended that there are no reasons to award such enormous sentence upon the accused.

4. I find considerable force in the submissions made by Mrs.Dhuru. It may be that brown power was found with the accused weighing about 30 kgs. but since the C.A. has not carried out any quantity test, it is difficult to held that as to how much actual percentage of heroin was in 30 kgs. brown sugar. No special reason is given by the trial Court in awarding

the sentence. Therefore, the appeal is required to be partly allowed so far as it relates to sentence.

5. The appeal is partly allowed. The conviction of the accused under Sections 29, 21 and 28 r/w 23 of the NDPS Act is maintained. However, his sentence is reduced on each count from 13 years to 10 years and fine imposed upon him is also reduced on each count from Rs. Two lacs to Rs. One lac and, in default sentence will be reduced form one year to three months on each count. Therefore, the accused has to undergo total substantive sentence for ten years. Total payment fine is Rs.three lacs and in default he has to further undergo R.I. for nine months. Office to intimate this order immediately to the concerned jail authority. Appeal is disposed of accordingly.

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